

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MEDITERRANEAN SHIPPING CO. S.A.  
and MEDITERRANEAN SHIPPING CO.  
(USA) INC.,

07-cv-11110 (Baer)

Plaintiff(s),

-against-

ALL AMERICAN PRODUCE CORP.,

Defendant(s).

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS'  
MOTION FOR DEFAULT JUDGMENT

MAHONEY & KEANE, LLP.  
Attorneys for Plaintiffs  
11 Hanover Square – Tenth Floor  
New York, NY 10005

PRELIMINARY STATEMENT

This Memorandum of Law is submitted on behalf of Plaintiffs MEDITERRANEAN SHIPPING CO. S.A. and MEDITERRANEAN SHIPPING CO. (USA) INC. (“MSC”), in support of their Motion for Default against Defendant ALL AMERICAN PRODUCE CORP. (“ALL AMERICAN”) for its failure to answer or otherwise defend Plaintiffs’ claims, and granting Plaintiffs judgment for \$4,677.67.

STATEMENT OF FACTS

For a complete version of the relevant facts please refer to Plaintiffs’ Affidavit in Support of Motion.

ARGUMENT

THIS HONORABLE COURT MUST GRANT PLAINTIFFS’ MOTION FOR DEFAULT JUDGMENT BECAUSE DEFENDANT HAS FAILED TO ANSWER OR OTHERWISE RESPOND TO PLAINTIFFS’ CLAIMS.

Rule 12(a)(1)(A) of the Federal Rules of Civil Procedure provide that “a defendant shall serve an answer within 20 days after being served with the summons and complaint.” Fed. R. Civ. P. §12(a)(1)(A) (2007). Upon failure of a defendant to serve the answer, the court may enter a default judgment against the defendant and in favor of the plaintiff. Fed R. Civ. P. §55.

In the present matter, Plaintiffs commenced an action against Defendant, seeking payment for unpaid freight charges. (Aff. in Supp. at Ex. 1). On January 30, 2008, service of process was effected on Defendant by personally delivering copies of the summons and complaint on George Rodriguez, Jr., authorized by appointment or law to receive service of process, at Defendant’s principal place of business. (Id. at Ex 2). Subsequent to the service of the Summons and Complaint, Mr. Jorge Rodriguez, the representative of ALL AMERICAN, contacted the undersigned and asked that the matter be settled without further intervention of the Court. (Id. at

¶ 7). As a result, the parties entered into a stipulation of settlement, whereby Defendant was required to pay a total of \$6,311.58, in consideration for Plaintiffs' dismissal of the underlying action. (Id. at Ex. 5) The terms of the stipulation required that the payments be made in three equal installments of \$2,103.86. (Id. at Ex. 5). Under the terms of the stipulation, the first of the three payments was to be made five days after Defendant's execution of the stipulation of settlement. (Id. at Ex. 5). The second payment was due thirty days after the initial payment, or in any event, no later than May 20, 2008. (Id. at Ex. 5). The third payment was due sixty days after the initial payment, or in any event, no later than June 30, 2008. (Id. at Ex. 5).

Defendant made the initial payment, as per the terms of the stipulation. (Id. at ¶ 11). However, Defendant, thereafter, failed to provide any additional payments. (Id. at ¶ 12). The undersigned attorney contacted Defendant via email and telephone, in an effort to resolve Defendant's default. (Id. at 13). Unfortunately, Defendant failed to provide payment for the amounts outstanding under the terms of the stipulation. (Id. at 13).

Defendant has not answered the Complaint and the time for the Defendant to answer the Complaint has expired. (Id. at 14). Defendant has, likewise, defaulted on its obligation under the settlement agreement. (Id. at 15).

#### CONCLUSION

WHEREFORE, Plaintiffs, MEDITERRANEAN SHIPPING CO. S.A. and MEDITERRANEAN SHIPPING CO. (USA) INC. respectfully request

(1) That this Honorable Court issue an Order granting Plaintiffs' Motion for Default;

(2) That the Court enter a judgment in favor of Plaintiff for \$4,677.67, constituting the amount demanded, costs and disbursements for this action; and

(2) For any other and further relief as this Court may deem proper.

Dated: New York, NY

July 18, 2008

MAHONEY & KEANE, LLP  
Attorneys for Plaintiff(s)  
MEDITERRANEAN SHIPPING CO. S.A. and  
MEDITERRANEAN SHIPPING CO. (USA) INC.

A handwritten signature in black ink, appearing to read 'Jorge A. Rodriguez', is written over a horizontal line.

By:

Jorge A. Rodriguez  
11 Hanover Square, Tenth Floor  
New York, New York 10005  
Tel (212) 385-1422  
Fax (212) 385-1605  
Our File No. 12/3490

STATE OF NEW YORK :  
SS.:  
COUNTY OF NEW YORK :

ARLINE VALENTI, being duly sworn, deposes and says: I am not a party to the action, am over 18 years of age and reside in, Staten Island, New York.

On July 18, 2008, I served a true copy of the annexed **MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT**

TO: ALL AMERICAN PRODUCE  
426 S.W. 7TH STREET, #8  
MIAMI, FLORIDA 33130

on this date by mailing the same in a sealed envelope, with postage prepaid thereon, in an official depository of the U.S. Postal Service.



ARLINE VALENTI

Sworn to before me on this  
18<sup>TH</sup> day of July, 2008



Notary Public

JORGE RODRIGUEZ  
NOTARY PUBLIC  
State of New York No. 02RO6128023  
Qualified in New York County  
Term Expires 06/06/2009